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THE THEODORE ROOSEVELT CONSERVATION PARTNERSHIP

Mission is to guarantee all Americans quality places to hunt and fish.

TRCP works with 61 diverse partnership groups to strengthen the sportsman's and sportswoman's voice on federal and state conservation policy

In Colorado, TRCP represents 6,300 engaged members, including hunters and anglers.

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Common Ground

- Agriculture is economically important to Colorado, maintaining long-standing exclusions of prior converted cropland, normal farming and ranching practices, farm and stock ponds, and maintenance of irrigation ditches

- Objective, science-based and clear CWA scope can reduce the need for case-by-case jurisdictions, timing, and expense to process permits for construction and water development

- Colorado Water Plan states that safe, clean water is important to all Coloradans, for drinking water, irrigation, recreation, or fish and wildlife

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2018 TRCP National Survey

- Sportsmen and women express strong and consistent support for policies intended to protect and restore the health of rivers, streams, and wetlands
- 92% of sportsmen and women want the federal government to strengthen or maintain current standards for clean water
- 93% of hunters and anglers believe the Clean Water Act has been a positive thing for our country

DUCKS UNLIMITED

BACKCOUNTRY HUNTERS & ANGLERS

OUTDOOR INDUSTRY ASSOCIATION

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Clean, productive wetlands and headwater streams are essential for hunters and anglers

- Every species of duck, goose, swan in North America depends on wetlands at some point in its life cycle
- Prairie potholes and other “isolated” or ephemeral wetlands, like playas, are valuable resources for waterfowl, providing nesting sites
- Headwater streams and wetlands provide important spawning habitat for commercial and recreational fish species, including the Greenback Cutthroat Trout and other native Colorado species
- In Colorado more than 80% of wildlife species depend on wetland and riparian areas at some point in their lives

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But also, for people and communities

- Delay runoff spring snowmelt, promoting groundwater recharge and extending duration of baseflow (i.e., longer irrigation seasons, outdoor recreational pursuits)
- Reducing sediment loading benefiting downstream water quality and operations of built infrastructure
- Store a disproportionately large volume of carbon
- Filter pollutants such as heavy metals and nutrients into downstream rivers, providing cleaner drinking water for communities, Tribes and agriculture
- Can serve as fire breaks to restrict spreading of wildfires and protect water quality from post-fire impacts

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Clean Water Act's Scope

- The Clean Water Act has been successful in slowing the loss of wetlands and providing a means for water development to continue while mitigating impacts on critical freshwater ecosystems

- Legislative history, early EPA/ACOE rulemaking, and Supreme Court decisions have all recognized that scope of the Clean Water extends beyond traditional "navigable" waters

- Published in April 2020, the Navigable Water Protection Rule (NWPR) significantly narrowed federal protections for ephemeral streams, wetlands not directly adjacent to another water of the U.S. and only recognizes surface connections

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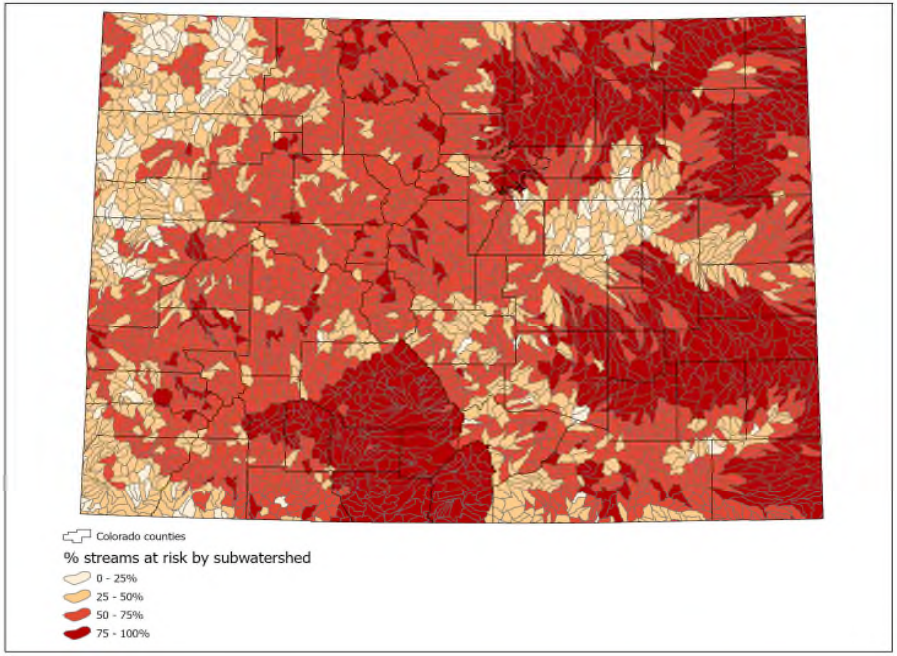
Navigable Water Protection Rule – Ephemeral and Intermittent Streams

- Southwestern streams, including Colorado, are predominately ephemeral and intermittent stream systems, but typically connect with perennial systems through groundwater and high flow events
- Total exclusion of ephemeral and most intermittent headwater streams that don't contribute flow in a **"typical year"**
- Based on numbers from Trout Unlimited and United States Geological Survey National Hydrography Dataset :
  - Approximately 4.8 million stream miles, 52% of stream channels by length in the lower 48, no longer benefited from CWA protection under the 2020 Rule
  - 24% of Colorado's streams are ephemeral and 45% are intermittent.
- Scientific record supports inclusion for a larger portion of ephemeral and intermittent streams as they are often physically, chemically, and biologically connected to downstream rivers



Percent of streams by subwatershed at risk of losing Clean Water Act protection under the Navigable Waters Protection Rule. Analysis by Trout Unlimited.

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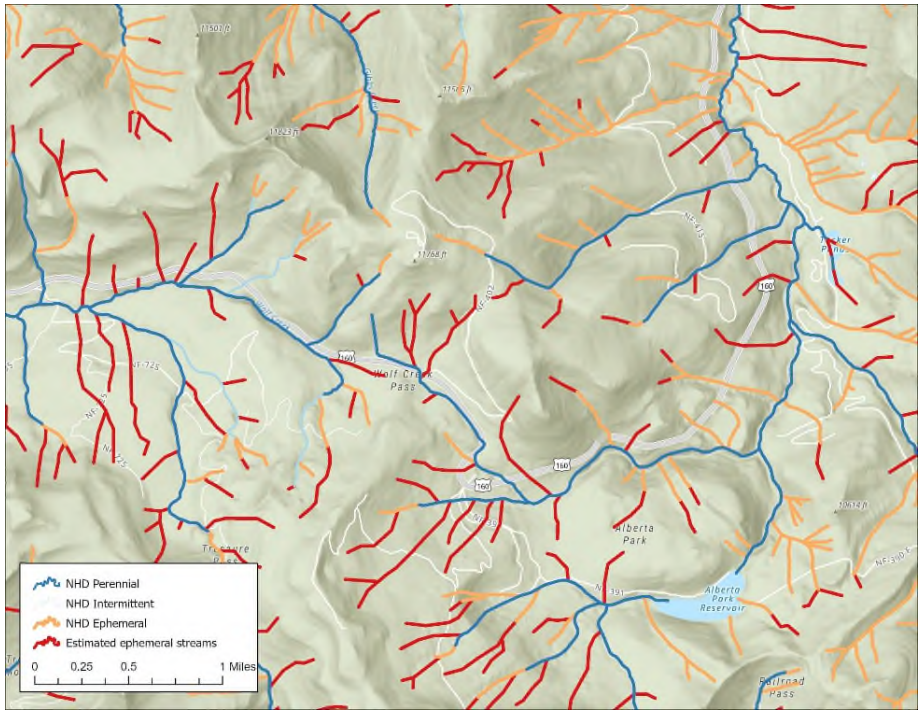

Stream systems in the San Juan and Rio Grande river basins in the vicinity of Wolf Creek Pass based on US Geological Survey's National Hydrography Dataset and additional stream mapping by Trout Unlimited. Streams with an ephemeral flow regime (red and orange streams in this map) were at risk of losing Clean Water Act protection under the Navigable Waters Protection Rule.

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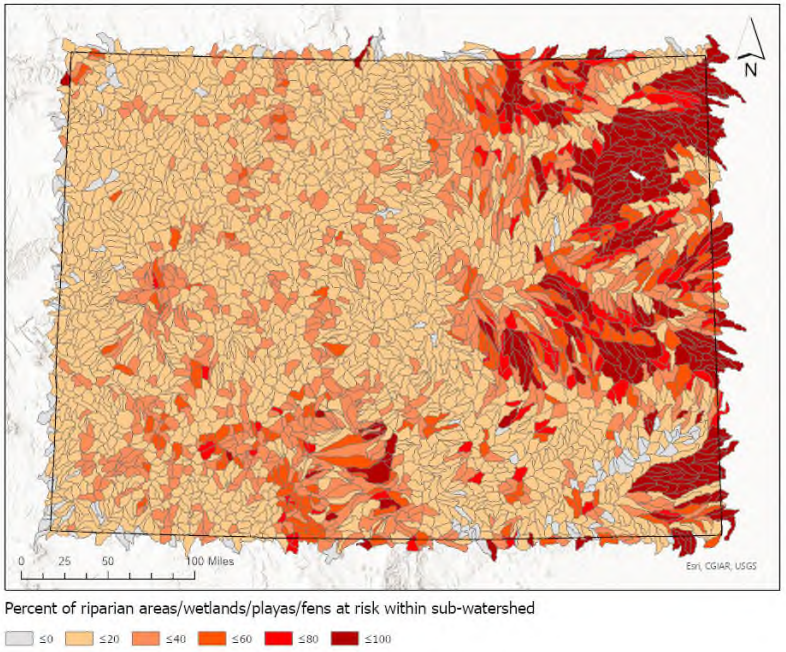
Navigable Water Protection Rule – Non-Floodplain Wetlands

- Exclusion of wetlands that are not directly adjacent to major rivers, ignores groundwater connections and non-flood plain wetlands such as prairie potholes and fens
- Given the requirement of a continuous surface water connection, approximately 51% of the National Wetlands Inventory's mapped wetland acreage were not considered adjacent
- 22% of Colorado riparian areas and wetlands could be at risk for conversion with changes in federal protections.
- An estimated 34% of high elevation fens and an estimated 95% of prairie potholes
- Scientific record supports inclusion broader wetland systems, including wetlands that lack direct surface connections, provide numerous functions that can benefit downstream water quality and integrity including storage of floodwater, groundwater recharge, maintenance of baseflow, providing wildlife connectivity, and filtering pollutants.



Percent of riparian areas, wetlands, fens, and playas by subwatershed at risk of losing Clean Water Act protection under the Navigable Waters Protection Rule. Analysis by The Nature Conservancy.

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Current Status

- EPA's own advisory board found the NWPR lacks scientific justification and posed risks to human and environmental health
- District Court of Arizona ruled that the NWPR posed "serious environmental harm" and remanded and vacated the rule
- Both the EPA and ACOE have halted implementation of the NWPR and are operating under the pre-2015 regulatory regime, which is more protective for intermittent and ephemeral headwaters and wetlands, but lacks clarity on many issues + more case-by-case
- Ongoing public comment and stakeholder process to inform a more "durable", replacement rule

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Next Steps

- Supportive of state's comments and participation in current rulemaking process, including maintaining federal exemptions for normal farming and ranching activities and maintenance of western water infrastructure

- Supportive of CDPHE and state to build on extensive public engagement and continue evaluating a state approach to provide more clarity for the regulated community and protections for Colorado waters during "see-sawing" WOTUS

- Supportive for a Congressional/federal approach to resolving this issue once and for all

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Waters of the US – Brief History

1972 – The Clean Water Act becomes law, provides for federal protections of navigable waters, defined as waters of the U.S.

1985 – *Riverside Bayview*

1986-88 – Environmental Protection Agency (EPA) and Army Corps of Engineers adopt regulations interpreting WOTUS (pre-2015 Rules and Guidance)

2001 – *Solid Water Agency of Northern Cook County*

2006 – *Rapanos*

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Waters of the US – Brief History

2008– Agency guidance on *Rapanos*

2015 – Clean Water Rule

2020 – Navigable Waters Protection Rule

2021

- EPA initiates public process to repeal and replace 2020 Rule
- U.S. District Court vacates the 2020 rule nationwide
- Public process to develop a “durable” WOTUS definition

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Jurisdictional Waters Under 2015 Clean Water Rule

Category	Waters
Categorically Jurisdictional	Traditionally navigable, interstate commerce (e.g. Colorado River, Rio Grande) Tributaries with certain features that indicated flow (bed and bank) and contributed flow directly or indirectly to a traditional navigable water including intermittent and ephemeral streams Adjacent wetlands, defined as those that are bordering, contiguous, or neighboring traditional waters/tributaries – neighboring defined by distance to the ordinary high-water mark and location in 100-year flood plain
Case-by-Case Jurisdiction	Prairie potholes, western vernal pools, fens and other isolated wetlands that may have a groundwater nexus with traditional waters
Excluded	Artificially irrigated areas that would revert to dry land should irrigation cease, constructed pons (e.g. farm and stock ponds), erosional features

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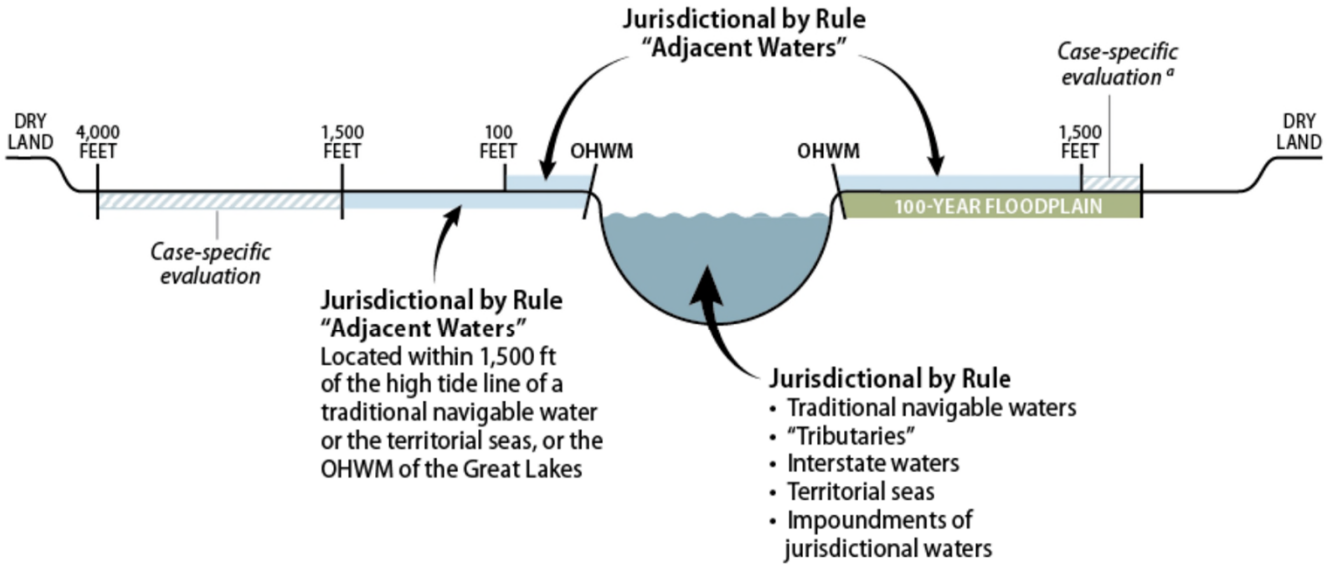
Jurisdictional Waters Under 2015 Clean Water Rule



OHWM = Ordinary High Water Mark

Case-specific evaluation also applies to prairie potholes, Carolina and Delmarva Bays, Pocosins, western vernal pools, and Texas coastal prarie wetlands